

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

NORMAN SEABROOK,

Defendant. :
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**ORDER DENYING MOTION
TO REDUCE SENTENCE**

16 Cr 467 (AKH)

ALVIN K. HELLERSTEIN, UNITED STATES DISTRICT JUDGE:

On November 25, 2020, Defendant Seabrook filed a motion to reduce his 58-month sentence, ECF No. 340, pursuant to the First Step Act. *See* 18 U.S.C. § 3582(c)(1). The Government opposes Defendant’s motion on the grounds that Defendant’s motion is procedurally and legally barred. Gov’t. Opp’n. 1, ECF No. 343. Defendant Seabrook’s motion is also opposed by two members of the Correction Officers’ Benevolent Association, who were victims of the defendant’s criminal conduct. ECF No. 344-1.

The Court may not modify a term of imprisonment once it has been imposed, except as provided by statute. 18 U.S.C. § 3582(c)(1)(A). In order for the Court to modify a sentence, a defendant must fully exhaust “all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier.” *Id.* A defendant’s sentence “commences on the date the defendant is received in custody awaiting transportation to, or arrives voluntarily to commence service of sentence at, the official detention facility at which the sentence is to be served.” 18 U.S.C. § 3585(a). A defendant who has not yet surrendered to the BOP to commence their sentence cannot seek relief under Section 3582. *See, e.g., United States v. Konny*, 463 F. Supp. 3d 402, 404 (S.D.N.Y. 2020) (finding motion for compassionate release premature

where motion was made before defendant began his custodial sentence); *United States v. Jordan*, No. 19 Cr. 478 (GHW), 2020 WL 4195353, at *3 (S.D.N.Y. July 16, 2020).

Defendant Seabrook is scheduled to surrender to the Bureau of Prisons on March 30, 2021. Because Seabrook has not begun to serve his sentence, he is unable to satisfy the requirement that he first exhaust his administrative remedies by making an application to the Bureau of Prisons. I therefore find that Defendant's motion is premature and deny his motion to reduce his sentence without prejudice. The victims who wish to be heard pursuant to the Crime Victims' Rights Act, 18 U.S.C. 3771(a)(4), are granted leave to resubmit their letters should Defendant Seabrook choose to renew his motion in the future.

SO ORDERED.

Dated: December 9, 2020
New York, New York

/s/
ALVIN K. HELLERSTEIN, U.S.D.J.